**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 3389 of 2007**
**To**
**FIRST APPEAL No. 3410 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT & 2 - Appellant(s)**
**Versus**
**MANIBEN DAHYABHAI - Defendant(s)**

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**Appearance :**
MR SUNIT C. SHAH, GOVT.PLEADER for Appellant(s) : 1 – 3 in FA NOS.3389 to 3399 OF 2007.

MS REETA CHANDARANA, AGP for appellants in FA Nos.3400 to 3410 of 2007.
MR AJ PATEL for respondent-claimants

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**CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 18/07/2007**

**COMMON ORAL JUDGMENT**

1. The State of Gujarat, through the Secretary,

Narmada Water Resources, Water Supply and Kalpsar Department and its functionaries (original opponents) have filed these appeals against the judgment and decree dated 31.12.2004 passed by the learned Civil Judge (SD), Bharuch, in L.A.R. Nos. 1495 to 1516 of 1997, main L.A.R. No.1495 of 1997. By the impugned judgment, the learned Judge was pleased to allow the Reference Applications partly with proportionate costs. The learned Judge has also held that the claimants are entitled to receive the amount of Rs.1750/- per Are (Rs.17.50 per sq.mtr.) in all for the acquired land. It may be noted that in that case, the Land Acquisition Officer has awarded Rs.390/- per Are (Rs.3.90 per sq.mtr.), which means that the learned Judge has awarded additional amount of Rs.13.40/- per sq.mtr. in this behalf. The learned Judge has also directed that the claimants are entitled to get increase at the rate of 12% per annum from the date of publication of the notification under Sec.4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act' for short)i.e.26th May 1993 to the date of award passed by the Special Land Acquisition Officer, i.e. 31.5.1995 as provided under Sec.23(1-A) of the Act.

2. I have heard Mr.Sunit Shah, learned Govt.Pleader and Ms.Reeta Chandarana, learned AGP appearing on behalf of the appellants and Mr.A.J.Patel, learned Sr.Counsel appearing on behalf of the respondents-claimants.

3. Appeals are admitted. Mr.A.J.Patel, learned Sr.Counsel waives service of notice of admission on behalf of the respondents-claimants. With the consent of the parties, these matters are taken up for final hearing and disposal and for that purpose, learned AGP has produced the judgment of this Court [Coram: J.M.Panchal, (as he then was) & Smt.Abhilasha Kumari, JJ.) in the case of State of Gujarat & 1 v. Ambalal Alias Ambubhai Dahyabhai Patel & 1 decided on 27th Feb.2007.

4. The facts giving rise to the present petition are as under:

4.1 The Executive Engineer, Narmada Project, Division No.1/5, Jambusar proposed to the State Government to acquire agricultural lands of village Gajera, Taluka Jambusar, Dist.Bharuch admeasuring 52863 sq.mtrs. for the public purpose of construction of minor canal under the Narmada Project. On perusal of the said proposal, the State Govt. was satisfied that the lands mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, Notification under Sec.4 of the Act which provides for publication of preliminary notification and powers of officers thereupon was issued which was published in the Official Gazette on 20th Oct.1994. Thereafter, necessary inquiry was conducted under Sec.5A(2) of the Act, which provides for hearing of objections. On the basis of the report submitted by

the Special Land Acquisition Officer, declaration under sec.6 of the Act was made, which was published in the Official Gazette on 26th May 1993. Sec.6 of the Act provides for declaration that land is required for a public purpose. The State Government thereafter published the said Notification under Sec.6 of the Act in the Official Gazette on 24th Feb.1994. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per sq.mtr. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated 31st May 1994 offered compensation to the claimants at the rate of Rs.3.90 per sq.mtr. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate and therefore the submitted applications under Sec.18 of the Act requiring the Special Land Acquisition Officer to refer their case to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the reference was made to the District Court, Bharuch, where it was registered as Land Acquisition Reference Nos.1495 of 1997 to 1516 of 1997.

4.2 Before the Reference Court, the claimants have based their claim only on previous award. One Arvindbhai Dholibhai Patel has been examined at Exh.15, wherein he has contended that the lands were

acquired in common land acquisition case and the village is situated in the sim of village Gajera which were adjacent to the sim of village Uchhad, meaning thereby the lands of both the villages were having common boundary and, therefore, the award passed in main L.A.R.Case No. 872 of 1987 in which land was acquired for village Gajera is relevant for the determination of the present land reference cases. He has further deposed as to the various judgments of this Court and the Hon'ble Apex Court. It has been further contended that in the previous award the value of the acquired lands was fixed at Rs.7.10 per sq.mtr. Shri Arvindbhai Dholibhai Patel has further deposed that the notification under Sec.4 of the Act in previous award was published on 8.12.1983 while in the present case, notification under Sec.4 of the Act was published on 26.5.1993, therefore, they are also entitled for the price rise at the rate of 12% an not at the rate of 10%. It was further contended that the price rise is required to be given at the average rate after consolidating the price rise at the rate of 10% and 12%. He has further deposed as to the consequential reliefs which have to be given under the provisions of the Act and worked out the value of the lands acquired at the rate of Rs.17.97. He has been cross examined by the opponent and admitted that he has not obtained and produced his price testimony report to show that the lands of village Uchhad and lands of village Gajera were of the same fertility and he has denied as to the sale instances of lands of his village. He has

further denied that he has produced any sale deed which was of low price.

4.3 It appears from the judgment, that the learned Judge has observed that lands of village Uchhad i.e. Present case) and village Gajera which was subject matter of earlier matter are adjacent to each other having common revenue boundary. The said fact has been deposed by the claimant in his deposition also which has not been challenged by the other side. So far as village Umra is concerned, it has not been mentioned as adjacent village in copy Exh.20. Furthermore, the opponents have not put any suggestion during the cross examination of the claimant that village Umra is adjacent or having common boundary with the revenue limit of village Gajera. No one has deposed on behalf of the opponents, therefore, also the learned Judge has observed that he has no hesitation to accept that the previous award passed in respect of lands acquired of village Uchhad is more relevant for the determination of the reference cases in question and the previous award passed for the lands acquired of village Umra is not relevant as the opponents failed to establish that village Gajera and village Umra are adjacent or lands acquired in both the cases were of the same vicinity, therefore, the previous award Exh.20 was not required to be considered as it is irrelevant for the purpose of determination of the value of the lands under the said reference cases.

4.4 So far as the previous award is concerned, the learned Judge has observed that it was passed by the Assistant Judge, Bharuch and awarded Rs.710/- per Are. The learned Judge has observed that it is pertinent to note that the Notification under Sec.4 of the Act in the previous award was 4.12.1983 while the notification under Sec.4 of the Act in the said reference cases was 26.5.1993, meaning thereby the notification under Sec.4 of the Act in the said reference cases was later by 10 years and therefore, relying upon previous award Exh.13, the claimants are also entitled for the price rise at the rate of 10% per annum and in all they are entitled for 100% towards the price rise, which means that the value of the acquired lands comes to Rs.1420/- per Are on the date of notification under Sec.4 of the Act in the said reference cases, while on behalf of the claimants Mr.Patel has relied upon a latest decision of the Supreme Court wherein the Hon'ble Apex Court in the case of Special Land Acquisition Officer, BYDA, Bagalkot v. Mohd. Hanif Sahibb Bawa Sahib, reported in AIR 2002 SC 1558 and the judgment of this Court in the case of Dy.General Manager, O.N.G.C. v. Chaturji Lalaji & ors., reported in 1988(1) GLR 130, wherein it has been held that for determination of market value by taking price fixed under old comparable sale transactions as base value and grant of appreciation in value of land at 10% per annum for every subsequent year is neither excessive nor unreasonable and the rate of 10% is a moderate price

rise rate. It has been further observed that the claimants are entitled to average price rise and that too on progressive basis & has held that 12% price rise is just and adequate. Further the learned advocate for the claimants had contended that if price rise at the rate of 10% is considered the value of the acquired lands would be Rs.15.15 and if the price rise at the rate of 12% with cumulative effect is accepted in terms of the judgment of the Hon'ble Supreme Court, the value of the acquired land would be Rs.20.78 per sq.mtr. And if average price rise is considered the value of the acquired lands would be Rs.17.97. The learned Judge has further observed that the above figure has been worked out by the claimants, considering the price rise which has cumulative effect, meaning thereby compound price rise has been worked out by the claimants.

4.5 In view of the above, the learned Judge has observed that instead of giving price rise progressively as prayed on behalf of the claimants only 10% price rise progressively is, if granted, it will met the ends of justice and therefore, the learned Judge has negatived the contention of the claimants with regard to the average price rise progressively and ultimately, granted Rs.1750/- per Are. Including the compensation granted by the Land Acquisition Officer.

5. This Court has heard Mr.Sunit C. Shah, learned Govt. Pleader and Ms.Reeta Chandarana, learned AGP

for the appellants and Mr.A.J.Patel, learned Sr.Counsel for the respondents – claimants, at length. This Court has also considered the paper book supplied by the learned counsel for the claimants, which includes the oral as well as documentary evidence adduced by the parties.

6. From the record of the case, it is evident that the claimants never claimed enhanced compensation either on the basis of yield or on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of village Uchhad. As observed earlier, the assertion made by the witness for claimants that the lands of village Uchhad were similar to the lands acquired in the instant case has almost gone unchallenged. The fact that the boundaries of the two villages are adjoining to each other is not in dispute. It is well settled that previous award of the Reference Court relating to a village which has attained finality can be considered to be a good piece of evidence for the purpose of determining market value of similar lands acquired subsequently from the adjoining village. Therefore, this Court is of the opinion that no error was committed by the Reference Court for the purpose of determining market value of the lands acquired in the instant case. On re-appreciation of evidence adduced before the Reference Court, this Court is of the opinion that the finding recorded by the Reference Court that the claimants were entitled to enhanced

compensation on the basis of previous award of the Reference Court relating o the lands of village Uchhad cannot be interfered with and deserves to be upheld. However, it is agreed by the learned counsel for the claimants that the claimants would be entitled to reasonable rise in price of lands at the rate of Rs.0.70 ps. per sq.mtr. For 10 years and if calculation is made on this basis, the claimants in all would be entitled to Rs.14.20 per sq.mtr. and not at the rate of Rs.17.50 per sq.mtr. as calculated by the Reference Court. Thus, the finding recorded by the Reference Court that the claimants are entitled to compensation at the rate of Rs.17.50 per sq.mtr. in all will have to be modified by holding that the claimants would be entitled to compensation at the rate of Rs.14.20 per sq.mtr.

7. For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated 31st Dec.2004 passed by the Civil Judge (SD), Bharuch in Land Acquisition Reference Case Nos. 1495 to 1516 of 1997 awarding in all compensation to the claimants at the rate of Rs.17.50 per sq.mtr. for their acquired lands, is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of Rs.17.50 per sq.mtr. The other benefits granted to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated herein-above. There shall be no order as to costs. The Registry is directed to draw

the decree in terms of this judgment immediately.

(K.M.Mehta, J.)

Sreeram.